

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES MICHAEL FECI,

Petitioner,

v.

ROBERT BURTON,

Respondent.

No. 2:20-cv-00878-KJM-CKD P

ORDER

Petitioner is a state inmate proceeding pro se in this habeas corpus action filed pursuant to 28 U.S.C. § 2254. On January 26, 2021, petitioner filed a motion to amend and a request to lift the stay and abeyance of this case. ECF No. 33. The court will deny this motion as premature because the October 30, 2020 Findings and Recommendations are still pending review by the district court judge assigned to this case. ECF No. 26. As a result, no claims have been formally dismissed that need to be amended back into the habeas petition upon their proper exhaustion in state court. Nor has a stay of this case been entered.

Additionally, the court notes that the exhibits attached to petitioner's motion do not establish that claims two and four have been properly exhausted in the California Supreme Court as the petition for review was returned unfiled. See Artuz v. Bennett, 531 U.S. 4 (2000) (explaining in the context of the statute of limitations that "an application is 'properly filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing

1 filings"). Nothing in this order precludes petitioner from filing a habeas corpus petition in the
2 California Supreme Court in order to properly exhaust claims two and four while the district court
3 judge reviews the pending Findings and Recommendations.

4 Accordingly, IT IS HEREBY ORDERED that petitioner's motion to amend the habeas
5 petition and lift the stay and abeyance of this case (ECF No. 33) is denied as premature.

6 Dated: February 10, 2021

Caryn K. Delaney

7 CAROLYN K. DELANEY
8 UNITED STATES MAGISTRATE JUDGE

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